

REMARKS/ARGUMENTS

Favorable reconsideration of this application, in view of the above amendments and in light of the following discussion, is respectfully requested.

Claims 1-11, 13, 14, and 16-18 are pending in the application. Claims 12 and 15 are canceled without prejudice or disclaimer. No new matter is introduced.

In the outstanding Office Action Claims 12 and 15 were rejected under 35 U.S.C. § 112, second paragraph, as indefinite. Claims 1-15 and 18 were rejected under 35 U.S.C. § 103(a) as unpatentable over Busch (DE 203 09 361) in view of Sommerkamp (U.S. Patent No. 5,197,966). Claims 16-17 are rejected under 35 U.S.C. § 103(a) as unpatentable over Busch, Sommerkamp, and Grusin (U.S. Patent No. 6,283,969).

With regard to the rejection of Claims 12 and 15 under 35 U.S.C. § 112(2), Claims 12 and 15 are canceled by the present response. Accordingly, Applicants respectfully request that the objection to Claims 12 and 15 be withdrawn.

In light of the telephone conversations between Examiner Matthew Lawson and Applicants' representative on October 21, 2009, transmitted herewith is a written response to the Final Rejection mailed August 13, 2009. Accordingly, Applicants respectfully traverse the rejection of Claim 1.

Claim 1 recites, among other features, a triangular plate part including a distal section provided at an end of the plate part furthest from a longitudinal shaft and first and second transverse surface sections that each extend from respective ends of the distal section to the longitudinal shaft. Furthermore, Claim 1 recites that an interior surface of each of the distal section, the first transverse surface section, and the second transverse surface section define a triangular envelope.

In response to the Office Action mailed February 4, 2009, and in light of the personal interview conducted with Examiner Lawson and Supervisory Patent Examiner (SPE) Thomas

Barrett on April 3, 2009, Claims 1 and 7 were then amended to recite the triangular envelope. As evidenced by the Interview summary mailed April 9, 2009, the recited triangular envelope was indicated to likely overcome the cited Weaver reference (U.S. Patent No. 6,623,486).

With regard to the triangular envelope, MPEP § 2143.03 states that “(a)ll words in a claim must be considered in judging the patentability of that claim against the prior art.”¹ In particular, Claim 1 recites “**an interior surface** of each of the distal section, the first transverse surface section, and the second transverse surface section **define a triangular envelope.**” Furthermore, the distal section, first traverse section, and second traverse section have also been particularly defined.

Turning to the applied references, Busch does not suggest or disclose the recited triangular envelope. As can be seen in the annotated copy of Figure 1 below, Busch illustrates a medical implant device that includes *oblong or slotted holes* 5 and *drilling head bores* 8.²

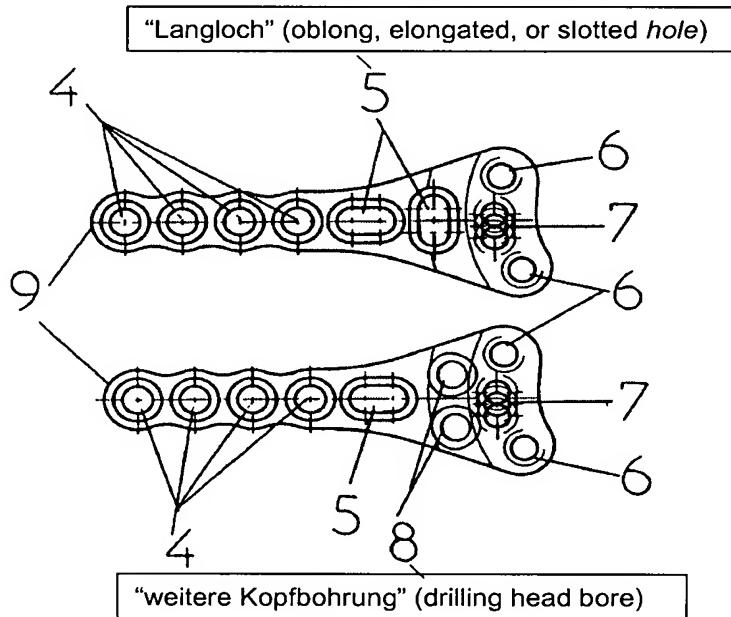


Fig. 1

¹ Quoting *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

² See Busch at page 10.

Not unlike the round holes 56 of Weaver, the **interior surfaces** of the device shown above in Figure 1 define at most the **oblong hole** 5 or the **drilling head bores** 8.³ Furthermore, one of ordinary skill in the art would recognize that a **triangular envelope** has a particular meaning. Clearly a device whose interior surfaces define the contours of various **round holes** do not suggest or disclose an **interior surface** of each of the distal section, the first transverse surface section, and the second transverse surface section that **define a triangular envelope**.

Moreover, the recited triangular envelope is not a mere design choice but rather, as described in the specification as originally filed, the Applicants acknowledge that a triangular plate part including a triangular envelope presents several advantages over conventional arrangements. Furthermore, a triangular envelope may not be simply combined with the features of Busch. MPEP § 2143.01(V) states “(i)f proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.⁴ Busch describes a specific device geometry whose features, such as oblong hole 5 and drilling head bores 8, provide particular functions. Replacing the holes of Busch with a triangular envelope would likely render the purpose of the holes of Busch unsatisfactory for their intended purposes.

For at least the reasons discussed above, Busch does not suggest or disclose all of the features of Claim 1.

The Office Action applied Sommerkamp and Grusin for features other than the triangular envelope recited in Claim 1. Furthermore both Sommerkamp and Grusin fail to cure the deficiencies of Busch. As can be seen in Figure 1 of Sommerkamp and Figure 1

³ See Weaver at Figure 7 and Column 6, line 1.

⁴ Quoting *In re Gorden*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

Grusin, neither of these references suggest or disclose the triangular envelope recited in Claim 1.

Based on the foregoing, even the combine teachings of Busch, Sommerkamp, and Grusin do not suggest or disclose the features of Claim. Accordingly, Applicants respectfully submit that Claim 1 is in condition for allowance.

Claim 7 recites a plate for stabilizing distal radius fractures including a longitudinal shaft and a plate part that includes a first and second transverse surface section, that respectively extend away from the longitudinal shaft to define a Y-shape. Furthermore, an interior surface of the first and second transverse surface sections define a **triangular envelope** with the arc shape of the distal ends of the first and second transverse surface sections. As stated above, the cited references do not suggest or disclose this feature. Accordingly, Applicants respectfully submit that Claim 7 is in condition for allowance.

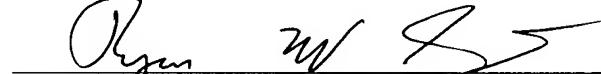
Dependent Claims 2-6, 8-11, 13, 14, and 16-18 are respectfully submitted to be in condition for allowance for at least the same reasons as the independent claims from which they depend. Moreover, the dependent claims recite additional features not suggested or disclosed by the cited reference.

For the reasons discussed above, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal allowance. Therefore, a Notice of Allowance for Claims 1-11, 13, 14, and 16-18 is earnestly solicited.

Should Examiner Lawson deem that any further action is necessary to place this application in even better condition for allowance, he is encouraged to contact the Applicants' undersigned representative at the below listed telephone number.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, L.L.P.



Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)

Gregory J. Maier
Attorney of Record
Registration No. 25,599

Ryan W. Smith
Registration No. 62,257